



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OLEM-2021-0590; FRL-10429-01-OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Final Decision on Request For Extension of Closure Date Submitted by Gavin Power, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability (NOA) of final decision.

SUMMARY: The Environmental Protection Agency (EPA or Agency) announces the availability of the final decision denying the extension request submitted by Gavin Power, LLC (Gavin) to allow a coal combustion residuals (CCR) surface impoundment, the Bottom Ash Pond, to continue to receive CCR and non-CCR wastestreams after April 11, 2021, at the General James M. Gavin Plant located in Cheshire, Ohio. EPA is denying the extension based on its determination that Gavin failed to demonstrate that the facility meets the requirements for an extension. As a result of this decision, Gavin is hereby required to cease receipt of waste at the Bottom Ash Pond no later than **[INSERT DATE 135 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or such later date as EPA establishes to address demonstrated electric grid reliability issues.

DATES: The effective date of the final decision (“Effective Date”) is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The final decision and supporting information are available for review in the docket for this action at <https://www.regulations.gov> under Docket ID No. EPA-HQ-OLEM-2021-0590. The final decision is also posted on EPA’s website at <https://www.epa.gov/coalash>.

FOR FURTHER INFORMATION CONTACT: Frank Behan, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460;

telephone number: (202) 566-0531; email address: *Behan.Frank@epa.gov*. For more information on EPA's CCR regulations, please visit <https://www.epa.gov/coalash>.

Judicial Review: Because EPA's final action promulgates requirements under the Resource Conservation and Recovery Act (RCRA), pursuant to RCRA section 7006(a), petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) within ninety days of publication of this notice in the Federal Register. 42 U.S.C. 6976(a)(1).

SUPPLEMENTARY INFORMATION: As documented in the final decision, EPA is taking final action to deny the request from Gavin for an extension of the date by which it must cease receipt of waste at the Bottom Ash Pond pursuant to the authority in 40 CFR 257.103(f). The Agency is denying the extension based on its determination that Gavin has not demonstrated compliance with the requirements of 40 CFR part 257, subpart D, as required in 40 CFR 257.103(f)(1)(iii).

Gavin is the owner and operator of the General James M. Gavin Plant in Cheshire, Ohio. The Gavin Plant is a coal-fired electric generation facility that generates and manages CCR on-site and is subject to the federal standards for the disposal of CCR in surface impoundments and landfills codified under 40 CFR part 257, subpart D ("regulations" or "CCR regulations").

Under the CCR regulations, owners and operators of unlined CCR surface impoundments were required to cease placing CCR and non-CCR wastestreams into unlined impoundments and initiate the closure (or retrofit) of the unit no later April 11, 2021. 40 CFR 257.101(a)(1). However, the regulations also include procedures by which an owner or operator of an unlined impoundment could request additional time to cease the receipt of waste and initiate closure of the unit. 40 CFR 257.103(f). On November 30, 2020, Gavin submitted a timely demonstration pursuant to 40 CFR 257.103(f)(1) requesting additional time to develop alternative capacity to manage CCR and non-CCR wastestreams in its Bottom Ash Pond, an unlined CCR surface impoundment subject to the requirement to close no later than April 11, 2021.

On January 11, 2022, EPA proposed to deny Gavin's request for additional time to develop alternative capacity to manage CCR and non-CCR wastestreams in its Bottom Ash Pond. EPA sought comments on the proposed decision during a comment period that closed on March 25, 2022. In response to the proposed decision, the Agency received approximately 30 comment letters from the public. All comment letters can be accessed in the docket for this action at www.regulations.gov under Docket ID EPA-HQ-OLEM-2021-0590. EPA's responses to public comments are either in the final decision or the Response to Comments document; both are available in the docket.

After considering the comments submitted on the proposal, EPA is denying the request for an extension of the deadline for the Bottom Ash Pond to cease receipt of waste because Gavin has not demonstrated that the facility is in compliance with all of the requirements of 40 CFR part 257, subpart D, as required in § 257.103(f)(1)(iii). First, EPA finds that Gavin has not demonstrated that it complied with the closure performance standards in 40 CFR 257.102(d) when it closed the Fly Ash Reservoir, a separate CCR surface impoundment at the Gavin Plant, with at least a portion of the CCR in the closed unit in continued contact with groundwater, and without taking any measures to address the groundwater continuing to migrate into and out of the impoundment. Second, Gavin did not develop a closure plan for the Fly Ash Reservoir consistent with 40 CFR 257.102(b). Third, Gavin has not demonstrated that the groundwater monitoring system for the Bottom Ash Pond is in compliance with the requirements of 40 CFR 257.93(a), 257.93(f)(3), or 257.94(c) regarding statistical analyses of data, or of 40 CFR 257.94(e)(2) for alternative source demonstrations. Finally, Gavin has not demonstrated that the groundwater monitoring system(s) for the Fly Ash Reservoir and Residual Waste Landfill (a CCR landfill at the Gavin Plant) comply with the requirements in 40 CFR 257.91, 257.93(a), 257.93(f)(3), 257.94(c), or 257.94(e)(2).

EPA's decision is also based on the determination that Gavin's workplan for obtaining alternative capacity does not meet the requirements of 40 CFR 257.103(f)(1)(iv)(A).

Specifically, Gavin failed to present a detailed plan of the fastest technically feasible schedule to complete its alternative capacity for non-CCR wastestreams. 40 CFR 257.103(f)(1)(iv)(A)(I)(iii).

As a result, Gavin is hereby required to cease receipt of waste at the Bottom Ash Pond no later than **[INSERT DATE 135 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or such later date as EPA establishes to address demonstrated electric grid reliability issues. EPA recognizes the importance of maintaining grid reliability and has established a process for Gavin to seek additional time if needed to address demonstrated grid reliability issues. Because Gavin is in the Pennsylvania-New Jersey-Maryland Interconnection (PJM) region, EPA closely considered the comments from and discussions with PJM and developed a process that relies on and is consistent with PJM's existing approach to scheduling outages and protecting electric grid reliability. To utilize this process, the final decision requires Gavin to submit a request for a planned outage to PJM no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to ensure that PJM has sufficient time to evaluate the potential impacts of a planned outage at Gavin. Additionally, Gavin must engage with PJM no later than 5 days after submitting the request for an outage to PJM and no later than **[INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to request assistance in scheduling the planned outage so that Gavin and PJM can determine the shortest period of time, if any, in which the generating unit must be online to avoid a reliability violation. Finally, to obtain an extension of the new deadline to cease receipt of waste to the Bottom Ash Pond, the final decision requires Gavin to submit a copy of the planned outage request submitted to PJM and the PJM determination (including the formal reliability assessment) to EPA within 10 days of receiving the response from PJM and no later than **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA will review the request and, without further notice and comment, issue a decision.

Barry N. Breen,

Acting Assistant Administrator,

Office of Land and Emergency Management.

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